

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate	)	CG Docket No. 17-59
Unlawful Robocalls - Petition for	)	
Reconsideration and Request for Clarification	)	
of USTelecom - The Broadband Association	)	

**ORDER ON RECONSIDERATION, SIXTH FURTHER NOTICE OF PROPOSED  
RULEMAKING, AND WAIVER ORDER**

**Adopted: December 10, 2021**

**Released: December 14, 2021**

**Comment Date: (30 days after date of publication in the Federal Register)**

**Reply Comment Date: (45 days after date of publication in the Federal Register)**

By the Commission:

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**I. INTRODUCTION**

1. Combatting illegal and unwanted robocalls is a top consumer protection priority for the Commission. In order to protect consumers from the scourge of these types of calls, the Commission has authorized voice service providers to block calls based on a variety of factors. In doing so, the Commission has also sought to protect legitimate callers from erroneous

blocking. The Commission has recognized that legitimate callers can provide important information to consumers and that consumers often want to receive such calls.

2. To balance protecting consumers from unwanted calls and callers from erroneously blocked calls, the Commission adopted certain transparency and redress requirements in the *Call Blocking Fourth Report and Order*.<sup>1</sup> In this *Order on Reconsideration*, the Commission reconsiders and clarifies certain aspects of the transparency and redress requirements adopted in the *Call Blocking Fourth Report and Order* to ensure that voice service providers continue to block unwanted and illegal calls, while also protecting the interests of legitimate callers and consumers. In the *Sixth Further Notice of Proposed Rulemaking*, the Commission seeks comment on whether to make permanent the flexibility afforded to callers in the *Order on Reconsideration*. Finally, in the *Waiver Order*, we grant a waiver to allow voice service providers terminating a call on an IP network to use SIP Code 603 in addition to SIP Code 607 or 608 from January 1, 2022 until the effective date of the amendments to section 64.1200(k)(9) adopted in the *Order on Reconsideration*.<sup>2</sup>

## II. BACKGROUND

3. The Commission receives more complaints about unwanted calls than any other issue.<sup>3</sup> The Federal Trade Commission (FTC)<sup>4</sup> and non-governmental entities report similarly high numbers.<sup>5</sup> Unwanted calls not only annoy consumers, they can defraud them and lead to identity theft.<sup>6</sup> In recent years, the Commission has fought the flood of robocalls with aggressive

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<sup>1</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-69, Fourth Report and Order, 35 FCC Rcd 15221, 15239-47, paras. 48-78 (2020) (*Call Blocking Fourth Report and Order*).

<sup>2</sup> Because we resolve the underlying issues in the Petition for Reconsideration, we dismiss as moot USTelecom's request to stay the January 1, 2022 deadline.

<sup>3</sup> We received 185,000 such complaints in 2017, 232,000 in 2018, 193,000 in 2019, and 157,000 in 2020. FCC, *Consumer Complaint Data Center*, <https://www.fcc.gov/consumer-help-center-data> (last visited Oct. 19, 2021). Thus far in 2021, we have received 139,000 such complaints. *Id.* Multiple factors can affect these numbers, including outreach efforts and media coverage on how to avoid unwanted calls. Complaint numbers declined significantly during the first four months of the COVID-19 pandemic, reducing the total number of complaints the Commission received in 2020.

<sup>4</sup> In fiscal year 2019, the FTC received an average of 315,000 robocall complaints per month. FTC, Biennial Report to Congress Under the Do Not Call Registry Fee Extension Act of 2007 at 3 (2019), <https://www.ftc.gov/system/files/documents/reports/biennial-report-congress-under-do-not-call-registry-feeextension-act-2007-operation-national-do-not/p034305dncreport2019.pdf>.

<sup>5</sup> For example, according to Hiya's State of the Calls Report, 50 billion unwanted robocalls were placed to U.S. mobile phones in 2020. See Adam Rowe, tech.co, "Americans Got 50 Billion Spam Calls Last Year," Feb. 11, 2021, <https://tech.co/news/americans-50-billion-spam-calls> (last visited Oct. 20, 2021). Similarly, YouMail estimates that 38.7 billion robocalls were placed nationwide so far in 2021. YouMail, *Historical Robocalls By Time*, <https://robocallindex.com/history/time> (last visited Oct. 20, 2021).

<sup>6</sup> Significant scams include impersonation of Internal Revenue Service or Social Security Administration agents, among others. See, e.g., *FCC and TIGTA Warn Consumers of IRS Impersonation Phone Scam: Scam Has Cost Victims Tens of Millions of Dollars*, Enforcement Advisory, 31 FCC Rcd 13184 (EB 2016) (warning consumers of scam callers claiming to be from the Internal Revenue Service and in which Caller ID is spoofed to display an IRS telephone number or "IRS"); Internal Revenue Service, *IRS: Be Vigilant Against Phone Scams; Annual "Dirty Dozen" List Continues* (Mar. 5, 2019), <https://www.irs.gov/newsroom/irs-be-vigilant-against-phone-scams-annualdirty-dozen-list-continue>; Federal Trade Commission, *Getting Calls from the SSA?* (Mar. 6, 2019), <https://www.consumer.ftc.gov/blog/2019/03/getting-calls-ssa>.

enforcement and policy action, including authorizing voice service providers to block unwanted and/or illegal calls in certain circumstances.

4. The 2017 *Call Blocking Order* empowered voice service providers to block certain categories of calls that are highly likely to be illegal without consumer consent—calls purporting to be from invalid, unallocated, or unused numbers, for example.<sup>7</sup> The Commission further addressed blocking in 2019, when it made clear that voice service providers may block calls based on reasonable analytics designed to identify unwanted calls without consumers having to take any action, as long as consumers can opt out of the blocking service.<sup>8</sup> It also made clear that voice service providers could block all calls not on a consumer’s white list on an opt-in basis.<sup>9</sup>

5. In 2019, Congress passed a landmark anti-robocall law, the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act).<sup>10</sup> The Commission implemented the TRACED Act and expanded on its 2019 actions in the *July 2020 Call Blocking Order* by establishing a safe harbor from liability under the Communications Act and the Commission’s rules for erroneous call blocking.<sup>11</sup> Specifically, this safe harbor protects voice service providers from liability under the Communications Act and the Commission’s rules for the unintended or inadvertent blocking of wanted calls where terminating voice service providers block calls thought to be illegal or unwanted based on reasonable analytics that include caller ID authentication information and where the consumer is given the opportunity to opt out.<sup>12</sup>

6. In the December 2020 *Call Blocking Fourth Report and Order*, the Commission expanded a safe harbor from liability under the Communications Act and the Commission’s rules for network-based blocking based on reasonable analytics that incorporate caller ID authentication information designed to identify calls that are highly likely to be illegal, if this blocking is managed with human oversight and network monitoring sufficient to ensure that blocking is working as intended.<sup>13</sup> Because the Commission determined that such blocking would permit providers to block calls “no reasonable consumer would want to receive (those

<sup>7</sup> See generally 47 CFR § 64.1200(k)(1)-(2); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709-25, paras. 9-56 (2017) (*2017 Call Blocking Order*).

<sup>8</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4884-90, paras. 26-42 (2019).

<sup>9</sup> *Id.* at 4890-91, paras. 43-46.

<sup>10</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

<sup>11</sup> See 47 CFR § 64.1200(k)(3); *Call Blocking Order and Further Notice*, 35 FCC Rcd. at 7625-3-27 paras. 25-34.

<sup>12</sup> See *Call Blocking Order and Further Notice*, 35 FCC Rcd at 7625-27, paras. 25-34. This program must also be free of line-item charges to the consumer. *Id.* at 7625, para. 25. The Order also established a second safe harbor that protects voice service providers that block calls from bad-actor upstream providers that fail to mitigate bad traffic within 48 hours or take effective steps to prevent new and renewing customers from originating illegal traffic after the Commission notifies them of that traffic. *Id.* at 7627-31, paras. 35-45.

<sup>13</sup> See 47 CFR § 64.1200(k)(11); *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15234-37, paras. 39-46. In expanding this safe harbor, the Commission also adopted further requirements that all voice service providers take steps to stop illegal traffic on their networks and assist the Commission, law enforcement, and the Traceback Consortium in tracking down callers that make such calls. *Id.* at 15226, para. 13.

calls that are highly likely to be illegal),” the Commission determined that such blocking does not require voice service providers to establish an opt-out mechanism.<sup>14</sup> Further, pursuant to the TRACED Act’s requirement that the Commission take action to ensure that both callers and consumers receive transparency and effective redress for robocall blocking services provided on an opt-out or opt-in basis,<sup>15</sup> the *Call Blocking Fourth Report and Order* requires that voice service providers that block calls disclose such blocking, establish a dispute resolution process to correct erroneous blocking, and promptly resolve disputes.<sup>16</sup>

7. As part of these requirements, the Commission required that voice service providers blocking calls provide immediate notification to callers of such blocking through the use of specified Session Initiation Protocol (SIP) Codes.<sup>17</sup> SIP is the signaling protocol used in IP networks enabling calls to be made and received by end-users. SIP calls include both a SIP request and a SIP response, and the SIP response comes in the form of a three-digit code that indicates the status of the SIP request, such as whether it was accepted. SIP Codes in the 600 range notify a caller when their call has failed to reach the intended recipient. The Commission specified that terminating voice service providers that block calls on an IP network return SIP Code 607 or 608, as appropriate.<sup>18</sup> Because SIP Codes are not available on non-IP networks, the Commission required use of ISUP code 21 for calls blocked on a TDM network.<sup>19</sup>

8. In adopting this requirement, the Commission acknowledged that callers may receive SIP Code 603 when calls have been blocked.<sup>20</sup> The Commission stated that this is “likely to occur when call signaling transits from TDM to IP.”<sup>21</sup> The *Call Blocking Fourth Report and Order* further required “all voice service providers in the call path” to transmit the appropriate SIP Codes to “the origination point” of the call.<sup>22</sup> The Commission set a deadline of January 1,

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<sup>14</sup> See 47 CFR § 64.1200(k)(11); *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15234, para. 39 n.89.

<sup>15</sup> See TRACED Act § 10(b) (codified at 47 U.S.C. § 227(j)).

<sup>16</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15238-47, paras. 48-78 (to be codified at 47 CFR § 64.1200(k)(8)-(10)).

<sup>17</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15239, para. 52 (to be codified at 47 CFR § 64.1200(k)(9)).

<sup>18</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56 (to be codified at 47 CFR § 64.1200(k)(9)(i)). SIP Codes 607 and 608 are defined by the IETF to be used in the call blocking context. Internet Engineering Task Force, *A SIP Code for Unwanted Calls* (July 2017), <https://tools.ietf.org/html/rfc8197> (*SIP Code 607 Specification*); Internet Engineering Task Force, *A Session Initiation Protocol (SIP) Response Code for Rejected Calls* (Dec. 2019), <https://tools.ietf.org/html/rfc8688> (*SIP Code 608 Specification*). Code 607 is used when the called party indicates a call is unwanted. *SIP Code 607 Specification*. Code 608, however, indicates a call was rejected by an intermediary, with the initial use case being calls rejected by an analytics engine, as opposed to by the called party. *SIP Code 608 Specification*. We expect that most blocking offered by IP-based voice service providers will use code 608. We recognize, however, that code 607 may be more appropriate when the called party plays a role in the rejection, e.g., when the caller is not on a customer’s white list.

<sup>19</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56 (to be codified at 47 CFR § 64.1200(k)(9)(ii)).

<sup>20</sup> *Id.* at para 57.

<sup>21</sup> *Id.*

<sup>22</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15238, para. 49 (to be codified at 47 CFR § 64.1200(k)(9)).

2022 for voice service providers to comply with the immediate notification requirements.<sup>23</sup> Additionally, the Commission required that any terminating voice service provider that blocks calls on an opt-in or opt-out basis provide, on the request of the subscriber to a particular number, a list of all calls intended for that number that the voice service provider or its designee has blocked.<sup>24</sup>

9. On May 6, 2021, USTelecom filed a petition seeking reconsideration and clarification of certain portions of the transparency and redress requirements adopted in the *Call Blocking Fourth Report and Order*.<sup>25</sup> First, the Petition asks the Commission to “[m]ake clear that service providers have flexibility to select the appropriate code or tool to notify callers that their calls have been blocked,” rather than requiring use of SIP Codes 607 or 608.<sup>26</sup> Second, the Petition asks the Commission to “[c]onfirm that voice service providers only are required and expected to provide notification of blocking when calls are blocked based on opt-in or opt-out analytics programs, and not in contexts where those requirements do not make sense.”<sup>27</sup> Similarly, the Petition asks the Commission to clarify that the blocked calls list “need only include calls blocked based on a provider’s opt-in [or] opt-out analytics-based robocall blocking services, and not based on other features selected by the customer.”<sup>28</sup> Finally, the Petition seeks confirmation that “voice service providers serving enterprises and other organizations have the flexibility to work with those customers to determine the best approach to notification on a case-by-case basis.”<sup>29</sup>

10. The Consumer and Governmental Affairs Bureau sought comment on this Petition on May 11, 2021.<sup>30</sup> The Commission received comments from 12 parties, representing both the calling industry and voice service providers.

11. USTelecom supplemented its request in an *ex parte* filed on July 27, 2021.<sup>31</sup> In this *ex parte*, USTelecom proposes allowing providers to use SIP Code 603 for blocking notifications “in the short term” and argues that this SIP Code is both useful for callers and technically feasible for voice service providers.<sup>32</sup> USTelecom argues that, “SIP Code 603 is the *only* way providers can implement a return code in the short term.”<sup>33</sup> USTelecom states that,

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<sup>23</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15242, para. 61 (to be codified at 47 CFR § 64.1200(k)(10)).

<sup>24</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15242-45, paras. 62-69.

<sup>25</sup> Petition for Reconsideration and Request for Clarification of USTelecom - The Broadband Association, May 6, 2021 (Petition).

<sup>26</sup> Petition at 2.

<sup>27</sup> Petition at 3. USTelecom argues that providers should not be required to provide any form of notification when they block calls for certain reasons, such as when a numbers are on the Do-Not-Originate list, are part of a suspected Telephone Denial of Service attack, or are blocked pursuant to a customer-initiated mechanism. *Id.*

<sup>28</sup> Petition at 13.

<sup>29</sup> Petition at 3.

<sup>30</sup> *Petition for Reconsideration of Action in Proceedings*, Report No. 3173, Public Notice (CGB May 11, 2021).

<sup>31</sup> See Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59 (filed Jul. 27, 2021) (USTelecom July 2021 *Ex Parte*).

<sup>32</sup> *Id.* at 1.

<sup>33</sup> *Id.* at 1 (footnotes omitted).

“SIP Code 603 will meet callers’ needs. A uniform return code, even without the jCard, gives callers actionable information: They know to investigate the issue and can take proactive steps.”<sup>34</sup> Finally, USTelecom argues that, even if the Commission mandates use of SIP Code 603, it should still provide voice service providers with flexibility for other “appropriate response codes that are still in development through the industry standards bodies,” as this would allow “further refinement to notification in the future.”<sup>35</sup> USTelecom states that if a provider cannot meet the notification requirement, “the provider’s only option is to stop blocking illegal and unwanted robocalls or to never start blocking those calls in the first instance.”<sup>36</sup>

### III. DISCUSSION

12. In this *Order on Reconsideration*, we grant in part and deny in part USTelecom’s Petition to the extent described herein. First, we grant USTelecom’s request that we allow voice service providers operating IP networks the flexibility to use SIP Code 603 to meet the immediate notification requirement beginning on January 1, 2022.<sup>37</sup> We deny USTelecom’s request to allow terminating voice service providers the flexibility not to provide immediate notification of blocking by means of the designated SIP or ISUP codes. Next, we grant USTelecom’s request that we clarify that our immediate notification requirements apply to all analytics-based blocking, and do not apply to non-analytics-based blocking programs. Third, we clarify that our blocked calls list requirements apply only to opt-in or opt-out analytics-based blocking and not to other blocking programs. Finally, we deny USTelecom’s request that we allow originating voice service providers to choose the method by which they notify enterprise callers of a blocked call.

#### A. Use of Specific SIP and ISUP Codes for Caller Notification

13. We find that allowing terminating voice service providers to utilize SIP Code 603 during the finalization of and transition to SIP Codes 607 and 608 strikes a reasonable balance between ensuring that voice service providers have the technical ability to provide immediate notification to callers and ensuring that callers have a uniform means of receiving such notifications. As a result, we amend our immediate notification requirements to allow terminating voice service providers operating IP networks to use SIP Codes 603, 607, or 608 to comply with the rule. We therefore grant USTelecom’s request to allow use of SIP Code 603 as an alternative to SIP Codes 607 and 608, but we deny USTelecom’s broader request for general “flexibility” with regard to providing blocking notification.

14. We agree with caller commenters that argue for the need for a consistent and uniform notification requirement.<sup>38</sup> As Ad Hoc Telecom Users Committee (Ad Hoc) argues, allowing providers to choose any means of immediate notification of blocked calls would

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<sup>34</sup> *Id.* at 2. According to TNS, a jCard is an optional feature of SIP Code 608 that gives callers contact information to seek redress for a blocked call. See Letter from Steven A. Augustino, Counsel, Transaction Network Services, Inc., to Marlene H. Dortch, Secretary, FCC at 2 (Aug. 26, 2021) (*TNS Ex Parte*).

<sup>35</sup> *Id.*

<sup>36</sup> USTelecom July 2021 *Ex Parte* at 2.

<sup>37</sup> Although the rule states “all voice service providers in the call path must transmit[] an appropriate response code,” we focus in this order on the terminating voice service provider, as it is the terminating voice service provider that selects the appropriate response code to return to the caller to provide immediate notification.

<sup>38</sup> See, e.g., Ad Hoc Comments at 2-3.

“increase confusion for legitimate callers.”<sup>39</sup> We agree that legitimate callers should not be expected to navigate a variety of potential notification schemes to determine whether their calls have been blocked.<sup>40</sup> Rather, having a uniform immediate notification scheme is critical to meeting the TRACED Act’s requirement for transparency and effective redress. Based on the record, we believe the best method of advancing this goal is through the use of available SIP Codes that provide real-time data to callers.<sup>41</sup> Additionally, as ABA notes, many callers already can, or will be able to, receive and make use of SIP Codes, making such codes and the information they convey useful to callers.<sup>42</sup> Expanding the requirement to allow for use of one additional SIP Code for a period of time will not impose new burdens on either callers or voice service providers and best addresses the interests of all parties.<sup>43</sup>

15. We also agree with voice service providers that implementing SIP Code 607 or 608 by January 1, 2022 appears infeasible.<sup>44</sup> Voice service providers have been clear that there are a number of steps necessary before they can implement SIP Codes 607 or 608, including standards finalization, software design and testing, and interoperability mapping.<sup>45</sup> These hurdles, while surmountable, appear to require additional time. We agree with CTIA that mandating the deployment of SIP Codes 607 or 608 at this time, “could work against the

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<sup>39</sup> Ad Hoc Comments at 2-3. *See also* INCOMPAS Comments at 8-9 (“Callers and originating service providers that service them should not be expected to modify their systems to receive multiple forms of notification that each blocking entity separately decides best satisfies effective notice.”). INCOMPAS filed its comments jointly with the Cloud Communications Alliance (CCA).

<sup>40</sup> Ad Hoc Comments at 3.

<sup>41</sup> *See* Ad Hoc Comments at 4 (arguing that a unique, real-time indicator is the only way for callers to reliably know when calls are blocked); Voice on the Net Comments at 3 (“...without SIP response codes, expanded call blocking based on analytics would be invisible to the called party, the calling party, and the originating voice service provider”).

<sup>42</sup> *See* ABA Comments at 5-6. ABA filed comments jointly with ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, National Retail Federation, and Student Loan Servicing Alliance.

<sup>43</sup> *See* Letter from Laura H. Phillip, Counsel for the National Opinion Research Center, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, at 1-2 (filed June 17, 2021) (arguing that “flexibility” would return the situation back to the status quo, where many carriers failed to provide prompt and reasonable notice, and often provided no notice) (National Opinion Research Center *Ex Parte*).

<sup>44</sup> *See, e.g.,* Lumen Comments at 7 (noting a number of steps are necessary before implementation and arguing that it will require more time); NCTA Comments at 2-3 (arguing that the SIP Code requirements are based on “an unfinished standard” and may not be actually implementable); Verizon Comments at 5-6 (arguing that the Commission should let the standards process play out before implementing a SIP Code 607 or 608 requirement); USTelecom Reply at 3; *TNS Ex Parte* at 2 (arguing that there are numerous technical and cost considerations impeding use of 607 or 608). *But see,* Ad Hoc Comments at 5 (arguing that the Petition “provided no evidence indicating that carriers will be unable to meet the January 2022 notification implementation from a technical perspective”); ABA Comments at 6 (arguing that the Petition “does not address why the Commission’s solution is not sufficient until a specific mapping standard for SIP Codes 607 and 608 is finalized”); Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59 (Oct. 19, 2021); Letter from Linda Vandeloop, AT&T, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (Oct. 21, 2021) (*AT&T Oct. 2021 Ex Parte*) (arguing that SIP Code 603 already exists and can be implemented “reasonably quickly and efficiently . . . . AT&T believes it can be ready to return the 603 SIP code to notify callers of the blocking of calls by the January 1, 2022 [deadline].”); Letter from Alexi Maltas, SVP & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (Nov. 18, 2021).

<sup>45</sup> *See* Lumen Comments at 7; USTelecom Reply at 3.

Commission's goals and hinder robocall abatement efforts by discouraging providers from blocking the illegal and unwanted calls to protect consumers, as providers will not be encouraged to block calls if they are not technically able to comply with the accompanying blocked-call notification requirement."<sup>46</sup> As consumer groups have noted, requiring immediate use of SIP Codes 607 or 608 could force voice service providers to cease their blocking programs.<sup>47</sup> We agree with such commenters that this will result in more illegal and unwanted calls, undermining the Commission's goal of protecting consumers from such calls.<sup>48</sup> As a result, we believe that providing voice service providers the flexibility to use SIP Code 603 for immediate notifications is appropriate at this time.

16. Because SIP Code 603 is already in use and available to voice service providers and to callers with the appropriate equipment, we see no reason to delay the effective date of our immediate notification requirement.<sup>49</sup> Again, retaining the effective date of the immediate notification requirement while allowing for the use of an additional SIP Code to meet the requirement strikes a reasonable balance between uniformity for callers and technical ability for voice service providers. It also helps ensure that voice service providers continue to block illegal and unwanted calls, a critical consumer protection objective.<sup>50</sup> We note that nothing in this order prohibits a voice service provider from using SIP Codes 607 or 608 to meet its immediate notification obligations. Rather, the only change to our rule is allowing flexibility for voice service providers to use SIP Code 603. By allowing terminating voice service providers to use an existing SIP Code while transitioning to full implementation of SIP Codes 607 and 608, we mitigate voice service providers' concerns that requiring SIP Codes 607 or 608 will discourage use of call blocking tools.<sup>51</sup>

17. Additionally, allowing for use of SIP Code 603 will help "ensure that notification of blocking is uniform, clear, and distinct from other signals, such as a busy signal, and ensure that callers can act on this information."<sup>52</sup> We agree with USTelecom that "SIP Code 603 will meet callers' needs. A uniform return code, even without the jCard, gives callers actionable

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<sup>46</sup> Letter from Sarah K. Leggin, Director, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC (Sep. 10, 2021) (*CTIA Ex Parte*).

<sup>47</sup> See Letter from Margot Saunders, Senior Counsel, National Consumer Law Center, to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59 (Nov. 9, 2021) (*NCLC Nov. 2021 Ex Parte*).

<sup>48</sup> *NCLC Nov. 2021 Ex Parte* at 1.

<sup>49</sup> See *TNS Ex Parte* at 1 (noting that TNS already supports the use of SIP Code 603 for call blocking and that this code "is known in the industry and many providers already use the code for this purpose."); Letter from Radhika Bhat, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59 (Oct. 12, 2021) at 2 ("[M]any providers already send SIP Code 603 when they block calls and . . . providers are working on additional solutions based around SIP Code 603. The Commission should encourage industry to develop these types of solutions further.").

<sup>50</sup> See Letter from Margot Saunders, Senior Counsel, National Consumer Law Center, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59 (Sep. 22, 2021) (*NCLC Sept. 2021 Ex Parte*) ("We write this *ex parte* Notice solely to strongly urge the Commission to do one thing: ensure that the maximum number of unwanted and illegal calls are blocked."). The *NCLC Sept. 2021 Ex Parte* was filed on behalf of the National Consumer Law Center, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center, and the National Association of Consumer Advocates.

<sup>51</sup> See, e.g., *CTIA Comments* at 6; *USTelecom Reply* at 1-2.

<sup>52</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15241, para. 58.



information: They know to investigate the issue and can take proactive steps.”<sup>53</sup> Additionally, because SIP Code 603 is already in use by voice service providers, this interim measure will also “ensure that these requirements are easy to implement across the network.”<sup>54</sup> Indeed, some commenters that oppose petitioner’s request that we eliminate the SIP Code notification requirements argue that Commission specification of alternative means may alleviate their concerns.<sup>55</sup> We note that the *Call Blocking Fourth Report and Order* already recognizes and “encourage[s]” use of SIP Code 603 in certain immediate notification contexts.<sup>56</sup> We, therefore, find SIP Code 603 to be a natural and useful interim measure as industry moves to full implementation of SIP Codes 607 and 608.

18. We disagree with the Petitioner and those commenters that argue for more flexibility in providing notifications without any mandatory use of SIP or ISUP Codes.<sup>57</sup> As we said in the *Call Blocking Fourth Report and Order*, “[b]y establishing requirements for specific SIP and ISUP codes, we ensure, to the extent possible, that callers receive uniform responses.”<sup>58</sup> Such consistency is necessary to provide the effective redress that the TRACED Act requires and that legitimate callers need.<sup>59</sup> It also prevents callers from being required to buy additional

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<sup>53</sup> USTelecom July 2021 *Ex Parte* at 2. In the *Call Blocking Fourth Report and Order*, the Commission adopted rules mandating use of SIP Codes 607 and 608 as defined in the IETF standards that existed at the time of adoption. See *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56 n.132. Any parts of those standards that were optional at the time are optional under Commission rules. Additionally, that decision did not adopt any implementation standards, as the Alliance for Telecommunications Industry Solutions (ATIS) has not adopted such implementation standards. If appropriate, the Commission may take additional steps to mandate any new or revised standards to implement these codes. See *Sixth Further Notice of Proposed Rulemaking*, *infra* para. 43.

<sup>54</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15242, para. 58.

<sup>55</sup> INCOMPAS Comments at 6 (“If the Commission concludes more time is needed to finalize these codes, it should require blocking entities to use an available form of notification pending finalization of any implementation standard for the SIP Codes.”); ABA Comments at 8-9 (if implementation of the required SIP and ISUP codes is delayed, the Commission should specify appropriate alternative methods and make clear that these specific alternatives are required for safe harbor protection).

<sup>56</sup> The *Call Blocking Fourth Report and Order* notes that IETF documentation currently recommends that ISUP Code 21 be mapped to either SIP Code 403 “Forbidden” or, where the cause location is “user,” SIP code 603 “Decline.” *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15241, para. 57 n.135 (citing ISUP and SIP Code Mapping Specification). The *Call Blocking Fourth Report and Order* therefore requires use of SIP Codes 603, 607, or 608 when mapping from ISUP Code 21 with cause location “user.” *Id.* More specifically, the *Call Blocking Fourth Report and Order* “encourage[s]” voice service providers to use SIP Code 603 unless they have clear knowledge that 607 or 608 is the more appropriate code. *Id.* This mapping requirement will be codified in our rules at 47 CFR § 64.1200(k)(9)(iv). Nothing in this *Order on Reconsideration* upsets the use of these SIP Codes in their specified circumstances.

<sup>57</sup> See, e.g., Petition at 6-9; NCTA Comments at 2-3 (arguing that “locking the industry into a static approach at a time when new technical innovations are being developed” creates a risk “that providers may discontinue blocking because of compliance difficulties or confusion”); USTelecom Reply at 10 (arguing that flexibility will allow the market to determine the most efficient and beneficial forms of immediate notification).

<sup>58</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15242, para. 58.

<sup>59</sup> See Ad Hoc Comments at 4 (arguing that a unique, real-time indicator is the only way for callers to reliably know when calls are blocked); Voice on the Net Comments at 3 (“without SIP response codes, expanded call blocking based on analytics would be invisible to the called party, the calling party, and the originating voice service provider”).

equipment or adapt to a myriad number of notification methods.<sup>60</sup> We note that our rule does not limit the ability of voice service providers to provide alternative methods of notification in addition to SIP and ISUP codes. For example, while they must provide immediate notification in the form of SIP Codes 603, 607, or 608 on an IP network, nothing in our rules prohibits a voice service provider from providing additional forms of notification.

19. We disagree with the Petitioner and commenters that argue that we should not mandate use of SIP or ISUP codes because such immediate notification requirements would tip off bad actors to blocking activities.<sup>61</sup> As the Commission already stated in the *Call Blocking Fourth Report and Order*: “Bad actors can already rapidly adjust their calling patterns and are likely to change numbers as soon as connection rates drop, regardless of immediate notification.”<sup>62</sup> The Commission found that, “[T]he potential harm from providing notifications to bad actors is more than offset by the significant benefit to legitimate callers, which otherwise may not know why their calls are not reaching the intended recipient and therefore may be unable to access redress.”<sup>63</sup> We see nothing in the record that upsets that judgment from the *Call Blocking Fourth Report and Order*.

20. We also disagree with commenters that argue that we should delay our safe harbors for analytics-based blocking.<sup>64</sup> Because we are not delaying the effective date of our immediate notification requirements, we see no reason to delay our safe harbors for analytics-based blocking. Rather, our ruling today ensures that callers receive an immediate and uniform form of notification by the January 1, 2022 implementation date established in the *Call Blocking Fourth Report and Order*. Our safe harbors are a crucial part of combatting our number one consumer complaint and we see no reason to delay these safe harbors given the approach we take today. We note that some parties have expressed concerns about the efficacy of SIP Code 603, arguing that it does not meet the calling industry’s need without modifications, and that such modifications would obviate any cost or time savings for voice service providers.<sup>65</sup> We agree

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<sup>60</sup> See ABA Comments at 5-6 (noting that many callers already have the necessary equipment to receive and translate SIP Codes); INCOMPAS Comments at 8-9 (“Callers and originating service providers that service them should not be expected to modify their systems to receive multiple forms of notification that each blocking entity separately decides best satisfies effective notice.”).

<sup>61</sup> See, e.g., Petition at 6; Verizon Comments at 2 (arguing that the immediate notification mandate would increase the efficiency with which robocallers—both legal and illegal—can detect and avoid blocking); CTIA Comments at 8; USTelecom Reply at 17 (arguing that notification can be used opportunistically as a means to evade call blocking). *But see* Voice on the Net Comments at 4 (immediate notification does not allow bad actors to reverse engineer blocking as the bad actor still would not know the specifics of the algorithm); ABA Comments at 7-8 (noting that the Commission has already addressed this issue and arguing that it is unclear how alternative notification methods would be better on this issue); INCOMPAS Comments at 11-12 (the Commission already rejected the argument that immediate notification will tip off bad actors).

<sup>62</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 54.

<sup>63</sup> *Id.*

<sup>64</sup> See Voice on the Net Comments at 2; INCOMPAS Comments at 6; Letter from Christopher S. Shipley, Attorney & Policy Advisor, INCOMPAS, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59 at 1-2 (Oct. 12, 2021) (*INCOMPAS Oct. 12 Ex Parte*).

<sup>65</sup> See Letter from Glenn S. Richards, Counsel, Voice on the Net Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59 (Oct. 5, 2021) (*VON Coalition Oct. 5 Ex Parte*); *INCOMPAS Oct. 12 Ex Parte* at 2-3; Letter from Jonathan Thessin, Vice President/Senior Counsel, Consumer & Regulatory Compliance, Regulatory Compliance and Policy, American Bankers Association, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 at 2 (Nov. 2, 2021) (*ABA Nov. 2021 Ex Parte*) (arguing that “recipients of [SIP Code  
(continued....)

with voice service providers that have argued that SIP Code 603 provides information that is actionable and informative for callers.<sup>66</sup> USTelecom argues that its members' analyses "showed that their enterprise customers currently receive very low rates of SIP Code 603 relative to outbound calls made—less than 0.4% across providers."<sup>67</sup> As a result, callers' concerns about overuse of SIP Code 603 may be overstated. We seek comment on these concerns below in the *Sixth Further Notice of Proposed Rulemaking* and a variety of issues related to use of SIP Code 603, including whether to allow its use permanently or for a defined period of time.

21. We decline to grant the six-month extension advocated by some commenters representing the calling industry to complete implementation work on SIP Codes 607 and 608 in lieu of using SIP Code 603.<sup>68</sup> We agree with USTelecom that, "[a]dvocates for an extension never explain why that time period would be enough to fully standardize, operationalize, and ultimately deploy 607 and 608."<sup>69</sup> Further, a six-month extension would retain the status quo in which callers would receive no actionable information for a further six-month period. We believe that providing callers with some information beginning on January 1, 2022 is preferable. We stress that our rule amendment does not limit voice service providers to the use of only SIP Code 603, but rather allows voice service providers that are able to send SIP Codes 607 and 608 to use such codes. Thus, callers may receive actionable information immediately through SIP

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603] will be required to decipher on a carrier-by-carrier basis the reason behind the code, defeating the Commission's purpose of affording called parties a clear and unambiguous notification that they can quickly act upon by contacting the blocking party"); Letter from Jesse Bird, Chief Technology Officer, TCN, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 at 3 (filed Nov. 30, 2021) (*TCN Ex Parte*); Letter from Christopher Shipley, INCOMPAS Attorney & Policy Advisor, Michael H. Pryor, Counsel for Cloud Communications Alliance, and Glenn S. Richards, Counsel for VON Coalition, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed Dec. 7, 2021) (*VON Coalition et. al December 7 Ex Parte*). See also Letter from Jonathan Thessin, Vice President/Senior Counsel, Consumer & Regulatory Compliance, Regulatory -Compliance and Policy, American Bankers Association, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 at 2 (filed Dec. 7, 2021) (*Associations Dec. 7 Ex Parte*) (noting that one large bank caller receives hundreds of SIP Code 603 responses per hour in certain circumstances). The *Associations Dec. 7 ex parte* was filed on behalf of American Bankers Association, ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, National Council of Higher Education Resources, National Association of Federally-Insured Credit Unions and the Credit Union National Association.

<sup>66</sup> See Letter from Christopher D. Oatway, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59 (Oct. 29, 2021). While TCN argues that SIP Code 603 "does not tell recipients who to contact," see *TCN Ex Parte* at 4, we note that 47 CFR 64.1200(k)(8) of our rules requires that each terminating provider that blocks calls or utilizes caller ID authentication information in determining how to deliver calls must provide a single point of contact, readily available on the terminating provider's public-facing website, for receiving call blocking error complaints and verifying the authenticity of the calls of a calling party that is adversely affected by information provided by caller ID authentication.

<sup>67</sup> Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59 at 2 (Nov. 8, 2021) (USTelecom Nov. 2021 *Ex Parte*). See also Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59 at 1 (Sep. 13, 2021) (USTelecom Sept. 2021 *Ex Parte*) (arguing that "[w]hile SIP Code 603 is used for other forms of call decline at times,...rudimentary analysis will show the difference between analytics-based blocking, which will present as a pattern, and other more ad hoc call declines, which will not.")

<sup>68</sup> See, e.g., *VON Coalition Oct. 5 Ex Parte*; *INCOMPAS Oct. 12 Ex Parte* at 2-3, Letter from Glenn S. Richards, Counsel, Voice on the Net Coalition, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (Oct. 21, 2021) (*Von Coalition Oct. 21 ex parte*); Letter from Elizabeth M. Young LeBerge, Senior Director of Advocacy & Counsel, Credit Union National Association, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (Oct. 26, 2021); ABA Nov. 2021 *Ex Parte*; *Associations Ex Parte* at 2-3.

<sup>69</sup> USTelecom Nov. 2021 *Ex Parte*.

Codes 603, 607, or 608. We seek comment in the *Sixth Further Notice of Proposed Rulemaking* on the appropriate timeframe, if any, for sunseting the use of SIP Code 603 for these purposes.

22. For these reasons, we grant USTelecom's request to allow use of SIP Code 603 as an alternative to SIP Codes 607 and 608, but we deny USTelecom's broader request for general "flexibility" with regard to providing blocking notification. We find that these changes will support the Commission's goals in the *Call Blocking Fourth Report and Order* without reducing the expected benefits or increasing the expected costs identified in that Order. Because we resolve the underlying issues in the Petition for Reconsideration, we dismiss as moot USTelecom's request to stay the January 1, 2022 deadline.<sup>70</sup>

### **B. Scope of Immediate Notification**

23. We grant USTelecom's request that we confirm that immediate notification to callers is necessary only for calls blocked pursuant to any analytics programs.<sup>71</sup> Here, we make clear that a voice service provider must comply with the immediate notification requirement whenever it blocks calls based on analytics, regardless of whether such blocking is done with consumer opt in or opt out, or at the network level without consumer consent. USTelecom asks the Commission to confirm that "notification [to callers] is only necessary for blocking where a legitimate caller might have a reasonable expectation its call is completed and not blocked."<sup>72</sup> USTelecom expands on this request by stating: "More specifically, the Commission should confirm that notification is only required for analytics-based blocking that targets illegal or unwanted robocalls, regardless of whether such blocking is offered on an opt-in or opt-out basis."<sup>73</sup> Because immediate notification is unhelpful and potentially harmful for the types of calls identified as problematic in USTelecom's petition, we find it unnecessary to extend the immediate notification beyond analytics-based programs. To the extent USTelecom asks the Commission to adopt a "reasonable expectation" standard for notification, however, we deny that request. We find it unnecessary to introduce a new standard given our clarification here.

24. We agree with USTelecom and others that, unlike calls blocked pursuant to analytics-based blocking programs, calls blocked because they are on a Do-Not-Originate (DNO)

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<sup>70</sup> See Request of USTelecom for Emergency Stay or Waiver in the Alternative, CG Docket No. 17-59 (Nov. 8, 2021).

<sup>71</sup> See Petition at 10. We note that this clarification is limited only to the immediate notification requirements adopted in the *Call Blocking Fourth Report and Order* and does not apply to other transparency and redress requirements such as, for example, the single point of contact requirements adopted in the *Call Blocking Order and Further Notice*, see *Call Blocking Order and Further Notice*, 35 FCC Rcd at 7633-36, paras. 51-59, or dispute resolution requirements from the *Call Blocking Fourth Report and Order*, see *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15245-47, paras. 71-78. The *Call Blocking Fourth Report and Order* requires that network-based blocking must be "nondiscriminatory and competitively neutral, and provided with no line-item charge to consumers." *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15235, para. 41, n.98. It further requires that voice service providers "comply with the redress mechanisms we adopted in the *Call Blocking Order and Further Notice*" as well as the transparency and redress requirements adopted in the *Call Blocking Fourth Report and Order* except for the blocked calls list requirement, which applies only to blocking on an opt-in or opt-out basis. See *id.* See also 47 CFR § 64.1200(k)(3)(iv)-(vi), (5), (6), (8); *Call Blocking Order and Further Notice*, 35 FCC Rcd at 7625-27, 7633-35, paras. 25-34, 52-57.

<sup>72</sup> Petition at 10.

<sup>73</sup> *Id.*

list have virtually no chance of being legitimate and thus blocked in error.<sup>74</sup> In fact, the Commission authorized these types of blocking, in part, because they are highly likely to be illegal. As USTelecom notes, “no legitimate caller should be using those numbers and therefore no caller should expect a return code if their calls from those numbers are blocked.”<sup>75</sup> In explaining its reason for adopting the immediate notification requirement, the Commission made clear that the purpose of this requirement is to ensure transparency and effective redress for legitimate callers.<sup>76</sup> That is, the requirement is necessary so that a legitimate caller may seek redress and verify the authenticity of its calls.<sup>77</sup> Such reasoning makes sense only in the case of analytics programs, which have a higher risk of erroneously blocking legitimate calls.<sup>78</sup> Because Congress’ and the Commission’s interest in adopting the immediate notification requirement is to provide transparency and effective redress for *legitimate* callers, we see no reason to expand our requirements to the types of calls that are highly unlikely to be from legitimate callers.<sup>79</sup>

25. The same reasoning applies in the case of calls blocked in response to a telephone denial of service (TDoS) attack.<sup>80</sup> Such calls are highly likely to be illegal or illegitimate, and we find no reason to believe that erroneous blocking is likely in such a scenario. Additionally, given the temporary nature of such blocking as well as the potential harm to consumers resulting from such attacks, we find that, in this limited circumstance, the need for provider flexibility in responding to TDoS attacks outweighs the small likelihood of erroneous blocking.<sup>81</sup>

26. Further, we agree with USTelecom that requiring notification in cases where the consumer has initiated the blocking, e.g., through white or black lists, Do Not Disturb, call rejection, and/or line-level blocking, is unnecessary because “the service provider could not do anything to reverse that type of blocking if contacted by the caller, as such blocking is being carried out at the subscriber’s specific direction.”<sup>82</sup> Because the ultimate purpose of the transparency requirements is to ensure effective redress to callers, we see no reason to expand

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<sup>74</sup> Petition at 11; Voice on the Net Comments at 5; NCTA Comments at 5; Somos Comments at 2-3; Letter from Josh L. Roland and Indra Sehdev Chalk, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC (Sep. 9, 2021) Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc., to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59 (Nov. 1, 2021). A DNO list is a registry for numbers that are used solely for inbound calls and, therefore, would never appear as the true calling number in Caller ID.

<sup>75</sup> Petition at 10. *See also* Somos Comments at 4 (arguing that there is no benefit to the subscriber in these cases and notification can create actual harm by alerting a scammer that a particular spoofed number is blocked); Voice on the Net Comments at 2 (agreeing that immediate notification need only be provided in the case of analytics-based blocking); Verizon Comments at 7-8 (expressing concern that notifying callers of non-analytics based blocking carries a higher risk of tipping off illegitimate callers).

<sup>76</sup> *See Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15238-39, para. 49.

<sup>77</sup> *See id.*; *see also Call Blocking Order and Further Notice*, 35 FCC Rcd at 7634-35, 7642-44, 7646-48, paras. 54-57, 85, 91-94, 107-12.

<sup>78</sup> *See* Petition at 11; Voice on the Net Comments at 5; NCTA Comments at 5; Somos Comments at 2-3.

<sup>79</sup> *See CTIA Ex Parte* at 2-3.

<sup>80</sup> *See* Petition at 11. *See also* INCOMPAS Comments at 6 (“The Petition’s request that notification not be required for calls using unassigned numbers or in the context of TDoS attacks is a reasonable clarification.”).

<sup>81</sup> *See* Petition at 11.

<sup>82</sup> *Id.*

such requirements to situations where the caller cannot obtain effective redress from the voice service provider.<sup>83</sup>

27. We deny, however, USTelecom's request to exempt voice service providers from our notification requirements "if they are temporarily unable to for technical reasons."<sup>84</sup> If voice service providers are unable to send immediate notification due to technical issues, they may seek a waiver from the Commission and such waivers will be evaluated on a case-by-case basis.<sup>85</sup>

28. We disagree with Ad Hoc, which argues that notification should be required for all blocked calls to allow callers to use alternative means to contact consumers.<sup>86</sup> Because we continue to require immediate notification for analytics-based blocking, we find little reason to believe that legitimate callers will not receive notifications for erroneously blocked calls. Rather, the limitations we clarify here only affect calls that are highly unlikely to be legitimate or that consumers have themselves chosen to block.

29. We thus find little reason to require immediate notification more broadly. One commenter argues that SIP Code 607 will provide relevant information to callers when a consumer initiates the blocking of their calls.<sup>87</sup> We leave the decision to standards-setting bodies to determine the appropriate level of information to send with SIP Code 607, so long as the technical standards the Commission mandated are met, balancing the need for consumer privacy with the need for legitimate callers to receive information necessary for effective redress of erroneously blocked calls.<sup>88</sup> Finally, we disagree with National Opinion Research Center, which argues that limiting this requirement only to opt-in or opt-out analytics blocking programs would give voice service providers "a strong incentive to simply label the reason for the blocking as anything other than 'analytics-based blocking.'"<sup>89</sup> We see no incentive for voice service providers to run afoul of Commission rules simply to avoid providing a blocked call notification to a legitimate caller.

30. Therefore, we clarify that the immediate notification requirement applies only to calls blocked pursuant to analytics programs, regardless of whether such blocking is offered on an opt-in or opt-out basis, or at the network level without consumer consent.

### **C. Blocked Calls List Requirement**

31. We next clarify that the requirement that any terminating voice service provider that blocks on an opt-in or opt-out basis must provide, on the request of the subscriber to a particular number, a list of calls intended for that number that the voice service provider or its designee has blocked applies only to blocking performed pursuant to opt-in or opt-out analytics

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<sup>83</sup> See USTelecom Reply at 12-13 ("Blocking done at the subscriber's explicit direction by definition cannot be in error, there can be no redress for subscriber-driven blocking without undermining the subscriber's choice, and . . . using alternative means to contact the consumer may circumvent the consumer's choice.").

<sup>84</sup> Petition at 11.

<sup>85</sup> See 47 CFR § 1.3.

<sup>86</sup> See Ad Hoc Comments at 6-7.

<sup>87</sup> See INCOMPAS Comments at 6.

<sup>88</sup> See USTelecom Reply at 11 ("SIP Code 607 Specification is not designed to provide blocking information to the caller, but rather to other entities that may take action based on the caller sending unwanted calls, including blocking future calls from that caller.").

<sup>89</sup> National Opinion Research Center *Ex Parte* at 2.

programs, rather than to subscriber-initiated features such as white lists, black lists, Do Not Disturb, call rejection, and line-level blocking.

32. In its Petition, USTelecom argues that “[t]here is no evidence that the Commission intended that the blocked call list capture calls blocked specifically at the subscriber’s direction through such [subscriber-directed] features.”<sup>90</sup> USTelecom argues that, for subscriber-initiated programs where subscribers choose and use certain features and customize them, a subscriber “knows, or should know, that they will not receive calls when they have such features activated, and therefore there is no reason for notice.”<sup>91</sup> USTelecom further argues that “it may not be practical from a technical perspective to include those calls in a blocked calls list, particularly in the case of features offered through legacy TDM networks like line-level blocking.”<sup>92</sup>

33. We agree with USTelecom that the blocked calls list is necessary only for calls blocked pursuant to opt-in or opt-out analytics programs, and we therefore clarify that our blocked-calls-list requirement applies only for calls blocked pursuant to those programs. As the Commission made clear in the *Call Blocking Fourth Report and Order*, the blocked calls list is necessary when consumers are unable to determine when blocking has occurred.<sup>93</sup> Because the consumer does not have specific insight into the analytics used by carriers to block unwanted or illegal calls or as to how those analytics may apply to a specific call the consumer wants to receive, such blocked calls lists are necessary for consumer awareness and effective redress.<sup>94</sup>

34. In the case of subscriber-initiated programs, the subscriber is better able to determine which phone numbers are blocked because the subscriber initiates and customizes such programs to their own preferences. As Lumen notes in its comments, the scope of such subscriber-initiated programs are “narrow and based upon a high level of customer engagement and awareness.”<sup>95</sup> As a result, the subscriber knows or should know what phone numbers are blocked pursuant to such programs and a blocked calls list is unnecessary. We further agree with USTelecom that such a requirement could pose technical feasibility issues.<sup>96</sup> Such issues could result in less availability of such consumer-oriented programs. We therefore clarify that our blocked-calls-list requirement applies only to calls blocked pursuant to opt-in or opt-out analytics programs.

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<sup>90</sup> Petition at 12.

<sup>91</sup> Petition at 13.

<sup>92</sup> *Id.* Petitioner also states that “the Commission should ensure that the blocked call list requirement cannot be read in a manner that conflicts with other Commission rules, such as the \*67 requirements that protect the originating caller’s information.” Petition at 13 n.27. Absent more information from Petitioner, we decline to address this argument.

<sup>93</sup> See *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15242-43, para. 62.

<sup>94</sup> In response to the *Call Blocking Order and Further Notice*, the Commission received several comments supporting a blocked calls list but urging caution in requiring the inclusion of calls blocked at the network-level. These comments noted that including such calls would be impractical, costly, and of little value to consumers. See, e.g., Comcast Comments at 8-9 (Aug. 31, 2020); AT&T Comments at 14-15 (Aug. 31, 2020); USTelecom Reply at 3 (Sept. 29, 2020).

<sup>95</sup> Lumen Technologies Comments at 4.

<sup>96</sup> See Petition at 13.

35. We also reiterate that our blocked-calls-list requirement does not apply to network-based blocking performed pursuant to the *Call Blocking Fourth Report and Order*.<sup>97</sup> In the *Call Blocking Fourth Report and Order*, the Commission expanded our safe harbor to include network-based blocking based on reasonable analytics that incorporate caller ID authentication information designed to identify calls that are highly likely to be illegal, if this blocking is managed with human oversight and network monitoring sufficient to ensure that blocking is working as intended.<sup>98</sup> Voice service providers may carry out such blocking without consumer opt out or opt in.<sup>99</sup> In enacting this provision, the Commission explicitly exempted such network-based blocking programs from its blocked-calls-list requirement.<sup>100</sup> Because the purpose of the blocked-calls-list requirement is to ensure effective redress to consumers, we continue to see no reason to apply such a requirement to situations where providers are not required to allow consumers to opt out and this redress requirement is, thus, inapplicable. As a result, we find that the blocked-calls-list requirement does not apply to such blocking programs.

36. We thus disagree with National Opinion Research Center, which, similar to its objection above, argues that voice service providers may purposefully misidentify the reason for a blocked call to avoid providing a blocked calls list.<sup>101</sup> We see little incentive for such activity and a voice service provider doing so would be in clear violation of our rules requiring call blocking lists for all opt-in or opt-out analytics-based blocking. We note that no other commenters objected to this requested clarification.

#### **D. Notification to Callers by Originating Providers**

37. Finally, we deny USTelecom's request that we "confirm that originating voice service providers can determine with their enterprise customers . . . how those customers . . . [will] be notified about blocking of their calls by downstream providers"<sup>102</sup> and that notifications to enterprise customers are "not covered by the Commission's notification requirement."<sup>103</sup> The *Call Blocking Fourth Report and Order* requires "all voice service providers in the call path" to transmit the appropriate SIP and ISUP Codes to "the origination point" of the call.<sup>104</sup> USTelecom first argues that the rule "is not clear whether or not an originating voice service provider must provide a response code to its calling customer."<sup>105</sup> We therefore clarify that an originating voice service provider must transmit the appropriate response code to the origination point of the call, which means that the code must be made available to callers that are able to receive it.

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<sup>97</sup> See *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15234-38, paras. 39-47.

<sup>98</sup> See *id.* at 15234-35, para. 39.

<sup>99</sup> *Id.* at 15235, para. 41.

<sup>100</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15235, para. 41, n.98 ("[Network-based] blocking is also subject to the same transparency and redress requirements we adopt in this [*Call Blocking Fourth Report and Order*], except the blocked calls list requirement, which only applies to blocking on an opt-in or opt-out basis.").

<sup>101</sup> National Opinion Research Center *Ex Parte* at 2.

<sup>102</sup> Petition at 14.

<sup>103</sup> Petition at 15.

<sup>104</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15239, para. 52.

<sup>105</sup> Petition at 14.



38. We first note that section 10(b) of the TRACED Act requires the Commission to ensure transparency and effective redress to consumers and “callers.”<sup>106</sup> That is, the focus of the TRACED Act and our rules implementing this provision is on transparency for the caller, not transparency for an originating provider. The TRACED Act makes no distinction between individual callers and enterprise callers and neither did the Commission in the *Call Blocking Fourth Report and Order*. In fact, the *Call Blocking Fourth Report and Order* explicitly states that “[w]e require terminating voice service providers that block calls to immediately notify callers of such blocking.”<sup>107</sup> To effectuate notification to callers, the *Call Blocking Fourth Report and Order* then requires that all voice service providers in the call path must return the appropriate code to the origination point “so that callers with the appropriate equipment may receive timely notice of a blocked call.”<sup>108</sup> This is to “ensure that legitimate callers know when their calls are blocked so they can seek redress.”<sup>109</sup> Further, the *Call Blocking Fourth Report and Order* notes that callers may need to upgrade their equipment to receive SIP Codes and encourages “originating voice service providers to work with their enterprise customers to ensure that these codes are properly passed.”<sup>110</sup>

39. Even more specifically, the *Call Blocking Fourth Report and Order* states that, “[t]he originating voice service provider should ensure that a caller with the correct equipment receives the code.”<sup>111</sup> It is clear from these statements that the Commission intended the requirement to pass response codes to the “origination point” to mean that such codes must be returned to the caller that originated the call, not just to the originating provider. This finding is consistent with the TRACED Act requirement to ensure that “callers” receive transparency and effective redress.

40. We thus agree with Ad Hoc that argues that the notification requirements adopted in the *Call Blocking Fourth Report and Order* should be seen as a minimum and that enterprise callers should not be required to “purchase any type of ‘value-added’ blocking-related service as a condition of or a corollary to system modernization.”<sup>112</sup> We are also concerned by comments like those of the National Opinion Research Center, which states that, in its own experience, “carriers have not provided any, much less prompt notification of blocked calls,” and argues that, “[s]imply handing carriers back this discretion would not benefit any stakeholders in this ecosystem and it would ignore congressional directives as well.”<sup>113</sup> We thus find that originating voice service providers must, at a minimum, transmit the appropriate response code to the caller.

41. We disagree with the Petitioner and commenters that argue that providers should have the flexibility not to provide the appropriate response code to enterprise customers.<sup>114</sup> At a minimum, originating voice service providers must transmit the appropriate response codes to

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<sup>106</sup> See TRACED Act § 10(b) (codified at 47 U.S.C. § 227(j)).

<sup>107</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15239, para. 52.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> See *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56 n.131.

<sup>111</sup> *Id.* at 15238, para. 49 n.119.

<sup>112</sup> Ad Hoc Telecom Users Committee Comments at 9.

<sup>113</sup> National Opinion Research Center *Ex Parte* at 3.

<sup>114</sup> See Petition at 14-15; Voice on the Net Comments at 5-6; NCTA Comments at 5; USTelecom Reply at 2.

enterprise customers, but nothing in our rules or orders prohibits providers from offering additional services to such customers. While USTelecom states that our rule “could cause unintended consequences and harm to those [enterprise] customers’ networks,” it provides no specific example of such consequences.<sup>115</sup> We made clear in the *Call Blocking Fourth Report and Order* that an originating provider is not responsible for a customer’s inability to receive or use the appropriate code if there is an issue with the customer’s equipment.<sup>116</sup> Providing a uniform approach to immediate notification puts enterprise customers on notice of the exact equipment they are responsible for without requiring such customers to purchase a potentially vast amount of additional equipment or value-added services. Originating voice service providers may negotiate additional agreements with their enterprise customers and have a variety of options when doing so. However, at a minimum, originating voice service providers must transmit the appropriate response code to the caller.

42. We therefore deny this aspect of the Petition and clarify that an originating voice service provider must transmit the appropriate response code to the caller.

#### IV. SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING

43. We continue to believe that we should retain the requirement that terminating voice service providers ultimately use only SIP Codes 607 or 608 in IP networks, as the adopted technical standards indicate these codes are designed to be used for call blocking.<sup>117</sup> As many commenters note, the design specifications for SIP Codes 607 and 608 provide important information that enables callers to contact blocking entities and initiate the redress process; such information is not contained in SIP Code 603.<sup>118</sup> We believe that these codes present the best long-term solution for immediate notification. While some commenters argue that certain design specifications may be difficult to implement,<sup>119</sup> we believe that the Commission should encourage standards-setting bodies to finalize their work and provide time for voice service providers to implement, test, and refine internal systems needed to return codes 607 and 608.

44. We seek comment on this belief and on whether and how to transition away from the use of SIP Code 603 for immediate notification and toward full implementation of SIP Codes 607 and 608. Should the Commission phase out use of SIP Code 603 for its immediate

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<sup>115</sup> *Petition* at 15 n31.

<sup>116</sup> *See Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56 n.131.

<sup>117</sup> *See Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56. *But see* USTelecom Reply Comments at 6 (arguing that SIP Code 607 is not intended to be a standard to inform the caller about blocking).

<sup>118</sup> *See* ABA Comments at 6-7 (the Commission should “require further explanation . . . regarding the technical impediments to using jCards to provide contact information that quickly enables callers to contact the blocking entity and initiate the redress process,” particularly since jCards are already in use in the STIR/SHAKEN standards); INCOMPAS Comments at 10-11 (arguing that jCards are integral to SIP Code 608); Letter from Christopher L. Shipley, Attorney & Policy Advisor, INCOMPAS, to Marlene H. Dortch, Secretary, CG Docket No. 17-59 at 1-2 (filed Sept. 20, 2021) (INCOMPAS Sept. 2021 *Ex Parte*) (stating that “603 was not designed for network level blocking as it presumes the call reached the called party,” that “what makes SIP Codes 607 and 608 so valuable is the specificity of information they provide,” and that “using SIP Code 603 as a ‘catch-all’ will lead to confusion and wholly undermine the purpose of SIP Codes 607 and 608 by making it difficult for competitive service providers to understand the cause of the notification.”).

<sup>119</sup> *See* Verizon Comments at 6-7 (arguing that the Commission should not include a requirement for a jCard); USTelecom Reply at 7, 9 (raising concerns about the viability of the jCard and noting that it would require resources and upgrades that will not be completed by January 2022 and that the jCard is “embedded in the Commission’s requirement” and “cannot be implemented in a practical and cost effective way”).

notification requirement or does SIP Code 603 provide adequate information to callers? Does SIP Code 603 require additional modifications to make it useful for callers?<sup>120</sup> If so, would such modifications potentially eliminate any cost or time savings gained from allowing its use?<sup>121</sup> Would use of SIP Code 603 for such purposes undermine its value for callers because its use is too varied for proper analysis by caller analytics programs?<sup>122</sup>

45. We note that no commenter provided a specific deadline for the “finalization” of ATIS standards for SIP Codes 607 and 608, and the current record is inconclusive regarding the amount of time such finalization will take. As we addressed in the *Order on Reconsideration*, some commenters have advocated for a six-month extension of the January 1, 2022 deadline, without explanation.<sup>123</sup> AT&T, however, argues that “[i]mplementing the new release codes, mapping them to a relevant TDM-based code, and implementing the jCard header information, which includes a secure signature, would likely take over a year and require extensive resources.”<sup>124</sup>

46. We agree with commenters that argue that we should reject arguments urging us to set aside our requirements for immediate notification until all work is “finalized.”<sup>125</sup> We thus declined in the *Order on Reconsideration* to delay the deadline for the immediate notification requirement. Is setting a firm deadline for implementation of SIP Codes 607 and 608 the best means of ensuring that voice service providers move expeditiously while allowing standards bodies to continue their important processes?<sup>126</sup> If the Commission requires use of only SIP Codes 607 and 608, what is the appropriate deadline for implementation? What factors should the Commission consider in making this decision? How might the Commission encourage standards bodies to finalize their work in a timely manner? Should the Commission require

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<sup>120</sup> See *VON Coalition Oct. 5 Ex Parte*.

<sup>121</sup> See *id.* See also *INCOMPAS Oct. 12 Ex Parte* at 3.

<sup>122</sup> See *INCOMPAS Oct. 12 Ex Parte* at 2-3.

<sup>123</sup> See para. 21 *supra*.

<sup>124</sup> AT&T Oct. 2021 *Ex Parte*.

<sup>125</sup> See ABA Comments at 6 (“To the extent that the IPNNI task force has not approved these codes, the Commission should direct the task force to approve the codes expeditiously.”); Voice on the Net Comments at 3-4 (noting that other IETF standards have been in wide use prior to there being [an] ATIS IP-NNI standard referencing the IETF standards and arguing that “the Commission should establish a deadline by which an IP-NNI reference must be completed in order to avoid undue delay”); INCOMPAS Comments at 8 (arguing against a delay in the deadline as it “appears that a ‘finalized’ and implementable standard is forthcoming”) and 12 (arguing that the deadline for compliance with immediate notification requirements should not be extended but the Commission should require “some form of real-time notification by January 1, 2022” if more time is needed to implement the SIP codes).

<sup>126</sup> See, e.g., CTIA Comments at 6-7 (arguing that the Commission should “defer to the ongoing, collaborative standards process”).

voice service providers to submit status reports on their progress in implementing SIP Codes 607 and 608?<sup>127</sup> If so, how often should we require such status reports?<sup>128</sup>

47. We seek comment on these and any other matters raised by the SIP Code requirements addressed in the *Order on Reconsideration*. We specifically request comment on any potential costs and benefits associated with phasing out SIP Code 603 for purposes of the immediate notification requirement, and the burden, if any, on small businesses.

## V. WAIVER ORDER

48. The *Call Blocking Fourth Report and Order* gave voice service providers until January 1, 2022 to comply with our immediate notification requirements<sup>129</sup> and, accordingly, section 64.1200(k)(9) of our rules has an effective date of January 1, 2022.<sup>130</sup> Nothing in the *Order on Reconsideration* affects that effective date. Recognizing, however, that the amendment we adopt today to our immediate notification requirement may not be published in the Federal Register before January 1, 2022, we hereby grant, pursuant to section 1.3 of our rules,<sup>131</sup> a waiver of subsection 64.1200(k)(9)(i) to allow voice service providers terminating a call on an IP network to use SIP Code 603, 607, or 608 from January 1, 2022 until the effective date of the amendments to section 64.1200(k)(9) adopted in the *Order on Reconsideration*.

49. We find that good cause exists to allow voice service providers to use SIP Code 603 beginning on January 1, 2022. Granting this waiver is necessary to avoid a situation where a terminating voice service provider on an IP network may be unable to return SIP Code 607 or 608 beginning on January 1, 2022 (for the reasons discussed in the *Order on Reconsideration*) and thus, absent a waiver, could choose not to block calls rather than to block calls in a manner that does not comply with section 64.1200(k)(9)(i).<sup>132</sup> This waiver is effective upon release of this *Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order*.

## VI. PROCEDURAL MATTERS

50. *Paperwork Reduction Act*. This document contains a non-substantive modification to an approved information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. This modification will be submitted to the Office of Management and Budget (OMB) for review pursuant to OMB's process for non-substantive changes. Because the changes are non-substantive, this document does not contain any new or modified information collection burden for small business concerns with fewer than 25

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<sup>127</sup> See *Associations Dec. 7 Ex Parte* at 3 (“If the Commission permits use of SIP Code 603 in the interim to satisfy the immediate notification requirement, we urge the Commission to require that Voice Service Providers implement SIP Codes 607 and 608 by a date certain, and provide periodic status reports stating the progress that Providers have made toward adopting operational standards.”).

<sup>128</sup> See *VON Coalition et. al December 7 Ex Parte* at 2 (“The Commission should require an initial status report within two months of the Order and every month thereafter.”).

<sup>129</sup> *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15242, para. 61.

<sup>130</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 64 Fed. Reg. 17726, 17727 (Apr. 6, 2021).

<sup>131</sup> 47 CFR § 1.3.

<sup>132</sup> See USTelecom July 2021 *Ex Parte* at 2; Petition at 5 n.8; CTIA Comments at 7; NCTA Comments at 3.

employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.<sup>133</sup>

51. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>134</sup> the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (SFRFA) relating to this *Order on Reconsideration*. The SFRFA is contained in Appendix B.

52. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>135</sup> as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Sixth Further Notice of Proposed Rulemaking*. The IRFA is found in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Sixth Further Notice of Proposed Rulemaking*, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Sixth Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.<sup>136</sup>

53. *Ex Parte Rules—Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules,<sup>137</sup> this *Sixth Further Notice of Proposed Rulemaking* shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>138</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding,

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<sup>133</sup> 44 U.S.C. 3506(c)(4).

<sup>134</sup> 5 U.S.C. § 603.

<sup>135</sup> See 5 U.S.C. § 603.

<sup>136</sup> See 5 U.S.C. § 603(a).

<sup>137</sup> 47 CFR § 1.1200(a).

<sup>138</sup> 47 CFR §§ 1.1200 *et seq.*

and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

54. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

55. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>139</sup> In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis, MD 20701.<sup>140</sup>

56. Pursuant to section 1.49 of the Commission's rules, 47 CFR § 1.49, parties to this proceeding must file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

57. *Materials in Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

58. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that these rules are "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

59. *Availability of Documents.* The *Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order* will be available via ECFS. This document will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, this document will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

60. *Additional Information.* For additional information on this proceeding, contact Jerusha Burnett, [Jerusha.Burnett@fcc.gov](mailto:Jerusha.Burnett@fcc.gov) or (202) 418-0526, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

## VII. ORDERING CLAUSES

61. **IT IS ORDERED**, pursuant to the authority contained in Sections 1-4, 201, 202, 227, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 202, 227, and 405, and sections 1.3 and 1.429 of the Commission's rules, 47 CFR §§ 1.3 and 1.429,

<sup>139</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>140</sup> See *Amendment of the Commission's Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020).

that this *Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order* **IS ADOPTED**.

62. **IT IS FURTHER ORDERED** that the Petition for Reconsideration and Request for Clarification of USTelecom—The Broadband Association filed in CG Docket No. 17-59 on May 6, 2021, **IS GRANTED IN PART and DENIED IN PART** to the extent indicated herein.

63. **IT IS FURTHER ORDERED** that the Petition for Emergency Stay or Waiver of USTelecom—The Broadband Association filed in CG Docket No. 17-59 on November 8, 2021, **IS DISMISSED**.

64. **IT IS FURTHER ORDERED** that section 64.1200 of the Commission's rules, 47 CFR § 64.1200, **IS AMENDED** as set forth in Appendix A, and that the amendments to section 64.1200(k)(9) **SHALL BE EFFECTIVE** 30 days after their publication in the Federal Register, and the amendments to section 64.1200(k)(10) **SHALL BE EFFECTIVE** upon the date to be announced by the Commission by notice in the Federal Register, following completion of OMB review under the PRA.

65. **IT IS FURTHER ORDERED** that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), the waiver adopted in the *Waiver Order* **SHALL BE EFFECTIVE** upon release.

66. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Sixth Further Notice of Proposed Rulemaking* on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

67. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of *Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

68. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order*, including the Supplemental Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

The Federal Communications Commission amends Part 0 and Part 64 of Title 47 of the Code of Federal Regulations as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising**

1. Amend § 64.1200(k)(9) to read:

(9) Any terminating provider that blocks calls based on any analytics program, either itself or through a third-party blocking service, must immediately return, and all voice service providers in the call path must transmit, an appropriate response code to the origination point of the call. For purposes of this rule, an appropriate response code is:

2. Amend § 64.1200(k)(9)(i) to read:

(i) In the case of a call terminating on an IP network, the use of Session Initiation Protocol (SIP) code 603, 607, or 608;

3. Amend § 64.1200(k)(10) to read:

(10) Any terminating provider that blocks calls pursuant to an opt-out or opt-in analytics program, either itself or through a third-party blocking service, must provide, at the request of the subscriber to a number, at no additional charge and within 3 business days of such a request, a list of calls to that number, including the date and time of the call and the calling number, that the terminating provider or its designee blocked pursuant to such analytics program within the 28 days prior to the request.



## APPENDIX B

## Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>1</sup> as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Call Blocking Fourth Report and Order*.<sup>2</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Order**

2. The *Order on Reconsideration* reconsiders and clarifies certain aspects of the transparency and redress requirements adopted in the *Call Blocking Fourth Report and Order* to ensure that voice service providers continue to block unwanted and illegal calls, while also protecting the interests of legitimate callers and consumers. The rules adopted in the *Order on Reconsideration* help clarify certain aspects of our rules while promoting greater flexibility for voice service providers in meeting the obligations set forth in the *Call Blocking Fourth Report and Order*.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. The Commission responded to all significant issues raised in response to the IRFA in the *Call Blocking Fourth Report and Order*.<sup>4</sup>

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>5</sup> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-69, Fourth Report and Order, 35 FCC Rcd 15221, 15239-47, paras. 48-78 (2020) (*Call Blocking Fourth Report and Order*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See *Call Blocking Fourth Report and Order*, 35 FCC Rcd 15221, 15257-15269, Appendix C.

<sup>5</sup> 5 U.S.C. § 604(a)(3).

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>8</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>9</sup>

**1. Wireline Carriers**

6. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>10</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>11</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>12</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

7. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for local exchange services. The closest

<sup>6</sup> See 5 U.S.C. § 603(b)(3).

<sup>7</sup> See 5 U.S.C. § 601(6).

<sup>8</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>9</sup> See 15 U.S.C. § 632.

<sup>10</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>11</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>12</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S.&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>13</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>14</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>15</sup> Consequently, the Commission estimates that most providers of local exchange service are small businesses.

8. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>16</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>17</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>18</sup> Consequently, the

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<sup>13</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>14</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>15</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>16</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>17</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>18</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

Commission estimates that most providers of incumbent local exchange service are small businesses.

9. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>19</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>20</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>21</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, shared-tenant service providers, and other local service providers are small entities.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>22</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>23</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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<sup>19</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>20</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>21</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S.&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>22</sup> 5 U.S.C. § 601(3).

<sup>23</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

11. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>24</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>25</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Consequently, the Commission estimates that the majority of interexchange carriers are small entities.

12. *Cable System Operators (Telecom Act Standard).* The Communications Act contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>27</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>28</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>29</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>30</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>31</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate

<sup>24</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>25</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>26</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>27</sup> 47 CFR § 76.901 (f) and notes ff. 1, 2, and 3.

<sup>28</sup> See SNL KAGAN at [www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx](http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx).

<sup>29</sup> 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

<sup>30</sup> See SNL KAGAN at <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

<sup>31</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to other toll carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>32</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>33</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>34</sup> Thus, under this category and the associated small business size standard, the majority of other toll carriers can be considered small.

## 2. Wireless Carriers

14. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>35</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>36</sup> For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.<sup>37</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless

<sup>32</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>33</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>34</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>35</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517312 Wireless Telecommunications Carriers (Except Satellite)”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>36</sup> 13 CFR § 121.201, NAICS code 517312 (2017 NAICS). The now-superseded CFR citation was 13 CFR § 121.201, NAICS code 517312 (referring to the 2012 NAICS).

<sup>37</sup> 2012 U.S. Economic Census, NAICS Code 517312, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Firms%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&n=517312>.

telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>38</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>39</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Satellite Telecommunications Providers.* The category of Satellite Telecommunications Providers “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>40</sup> This category has a small business size standard of \$35.0 million or less in average annual receipts, under SBA rules.<sup>41</sup> For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.<sup>42</sup> Of this total, 299 firms had annual receipts of under \$25 million.<sup>43</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

16. *All Other Telecommunications.* All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or [V]oice over Internet [P]rotocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>44</sup> The SBA has developed a small business size standard for the category of All Other Telecommunications.<sup>45</sup> Under that size standard, such a business is small if it has \$35.0 million in annual receipts.<sup>46</sup> For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year.<sup>47</sup> Of this total, 1,400 had annual receipts below

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<sup>38</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>39</sup> *Id.*

<sup>40</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2012>.

<sup>41</sup> 13 CFR § 121.201, NAICS Code 517410.

<sup>42</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517410.

<sup>43</sup> *Id.*

<sup>44</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>45</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>46</sup> *Id.*

<sup>47</sup> 2012 U.S. Economic Census, NAICS Code 517919 at <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1251SSSZ5&t=Employment%20Size&text=Estab%20%20>  
(continued....)



\$25 million per year.<sup>48</sup> Consequently, we estimate that the majority of all other telecommunications firms are small entities.

### 3. Resellers

17. *Toll Resellers.* The Commission has not developed a definition for toll resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>49</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>50</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>51</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>52</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>53</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>54</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

18. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>55</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>56</sup> Census data for 2012 show that 1,341 firms provided resale services during

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[26%20Firm%20Size%3A%20Employment%20Size%20of%20Firms%20for%20the%20U.S&n=517919&hidePreview=false&vintage=2012.](#)

<sup>48</sup> *Id.*

<sup>49</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>50</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>51</sup> *Id.*

<sup>52</sup> 2012 U.S. Economic Census, NAICS Code 517911, at <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012&text=Employment%20size&n=517911&cid=EMP>.

<sup>53</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>54</sup> *Id.*

<sup>55</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>56</sup> 13 CFR § 121.201, NAICS code 517911.



that year. Of that number, all operated with fewer than 1,000 employees.<sup>57</sup> Thus, under this category and the associated small business size standard, the majority of these local resellers can be considered small entities.

19. *Prepaid Calling Card Providers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>58</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>59</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>60</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

20. This *Order on Reconsideration* does not adopt any new reporting, recordkeeping, or other compliance requirements for small entities.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

21. The *Order on Reconsideration* relieves a burden on small voice service providers by allowing such providers more flexibility in meeting the immediate notification requirements adopted in the *Call Blocking Fourth Report and Order*.

**G. Report to Congress**

22. The Commission will send a copy of the *Order on Reconsideration*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>61</sup> In addition, the Commission will send a copy of the *Order on Reconsideration*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business

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<sup>57</sup> 2012 U.S. Economic Census, NAICS Code 517911, at <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012&text=Employment%20size&n=517911&cid=EMP>.

<sup>58</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>59</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>60</sup> 2012 U.S. Economic Census, NAICS Code 517911, at <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012&text=Employment%20size&n=517911&cid=EMP>.

<sup>61</sup> 5 U.S.C. § 801(a)(1)(A).

Administration. A copy of the *Order on Reconsideration* (or summaries thereof) will also be published in the Federal Register.<sup>62</sup>

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<sup>62</sup> See *id.* § 604(b).

## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA)<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Sixth Further Notice of Proposed Rulemaking* (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The FNPRM seeks comment on whether to phase out the use of SIP Code 603 for purposes of voice service providers' immediate notification requirements. We continue to believe that the Commission should retain its requirement that terminating voice service providers ultimately use only SIP Codes 607 or 608 in IP networks, as these codes are designed to be used for call blocking.<sup>4</sup> As many commenters note, the design specifications for SIP Codes 607 and 608 provide important information that enables callers to contact blocking entities and initiate the redress process.<sup>5</sup> We believe that these codes present the best long-term solution for immediate notification. While some commenters argue that certain design specifications may be difficult to implement,<sup>6</sup> we believe that the Commission should encourage standards-setting bodies to finalize their work and provide time for voice service providers to implement, test, and refine internal systems needed to return codes 607 and 608.

3. The FNPRM seeks comment on this belief and whether and how the Commission should phase out the use of SIP Code 603 for purposes of voice service providers' immediate notification requirements.

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<sup>1</sup> 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> *See Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15240, para. 56. *But see* USTelecom Reply Comments at 6 (arguing that SIP Code 607 is not intended to be a standard to inform the caller about blocking).

<sup>5</sup> *See* ABA Comments at 6-7 (the Commission should “require further explanation . . . regarding the technical impediments to using jCards to provide contact information that quickly enables callers to contact the blocking entity and initiate the redress process,” particularly since jCards are already in use in the STIR/SHAKEN standards); INCOMPAS Comments at 10-11 (arguing that jCards are integral to SIP Code 608).

<sup>6</sup> *See* Verizon Comments at 6-7 (arguing that the Commission should not include a requirement for a jCard); USTelecom Reply Comments at 7 (raising concerns about the viability of the jCard and noting that it would require resources and upgrades that will not be completed by January 2022); USTelecom Reply Comments at 9 (stating that the jCard is “embedded in the Commission’s requirement” and “cannot be implemented in a practical and cost effective way”).

**B. Legal Basis**

4. The proposed and anticipated rules are authorized under the 154(i), 201, 202, 227, 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 202, 227, 251(e), 403, and section 10 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>9</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>10</sup>

**1. Wireline Carriers**

6. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>11</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>12</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000

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<sup>7</sup> See 5 U.S.C. § 603(b)(3).

<sup>8</sup> See 5 U.S.C. § 601(6).

<sup>9</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>10</sup> See 15 U.S.C. § 632.

<sup>11</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>12</sup> 13 CFR § 121.201, NAICS code 517311.

employees.<sup>13</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

7. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Exchange Carriers. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>14</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>15</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>16</sup> Consequently, the Commission estimates that most providers of local exchange service are small businesses.

8. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>17</sup> Under that size standard, such a business is small if it has 1,500 or

<sup>13</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>14</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>15</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>16</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>17</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

fewer employees.<sup>18</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>19</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

9. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>20</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>21</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, shared-tenant service providers, and other local service providers are small entities.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>23</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of

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<sup>18</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>19</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S.&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>20</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>21</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>22</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S.&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>23</sup> 5 U.S.C. § 601(3).

operation because any such dominance is not “national” in scope.<sup>24</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>25</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>26</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>27</sup> Consequently, the Commission estimates that the majority of interexchange carriers are small entities.

12. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>28</sup> As of 2018, there were approximately 50,504,624 cable video subscribers in the United States.<sup>29</sup> Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250

<sup>24</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

<sup>25</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>26</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>27</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S.&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>28</sup> 47 U.S.C. § 543(m)(2); see 47 CFR § 76.901(f) & nn.1–3.

<sup>29</sup> S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2018, U.S. Cable MSO Industry Total*, <https://platform.marketintelligence.spglobal.com/>.

million in the aggregate.<sup>30</sup> Based on available data, we find that all but six incumbent cable operators are small entities under this size standard.<sup>31</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>32</sup> Therefore we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>33</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>35</sup> Thus, under this category and the associated small business size standard, the majority of other toll carriers can be considered small.

## 2. Wireless Carriers

14. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>36</sup> Under the

<sup>30</sup> 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

<sup>31</sup> S&P Global Market Intelligence, *Top Cable MSOs as of 12/2018*, <https://platform.marketintelligence.spglobal.com/>. The six cable operators all had more than 505,046 basic cable subscribers.

<sup>32</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 CFR § 76.909(b).

<sup>33</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517311 Wired Telecommunications Carriers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>34</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>35</sup> 2012 U.S. Economic Census, NAICS Code 517311, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Establishments%20for%20the%20U.S.&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&mode=&n=517311>.

<sup>36</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517312 Wireless Telecommunications Carriers (Except Satellite)”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.



present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>37</sup> For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.<sup>38</sup> Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>39</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>40</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Satellite Telecommunications Providers.* The category of Satellite Telecommunications Providers “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>41</sup> This category has a small business size standard of \$35.0 million or less in average annual receipts, under SBA rules.<sup>42</sup> For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.<sup>43</sup> Of this total, 299 firms had annual receipts of under \$25 million.<sup>44</sup> Consequently, we estimate that the majority of satellite telecommunications firms are small entities.

16. *All Other Telecommunications.* All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied

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<sup>37</sup> 13 CFR § 121.201, NAICS code 517312 (2017 NAICS). The now-superseded CFR citation was 13 CFR § 121.201, NAICS code 517312 (referring to the 2012 NAICS).

<sup>38</sup> 2012 U.S. Economic Census, NAICS Code 517210, at <https://data.census.gov/cedsci/table?q=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Firms%20for%20the%20U.S&g=&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&lastDisplayedRow=11&vintage=2012&n=517210>.

<sup>39</sup> *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>40</sup> *Id.*

<sup>41</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2012>.

<sup>42</sup> 13 CFR § 121.201, NAICS Code 517410.

<sup>43</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517410.

<sup>44</sup> *Id.*

telecommunications connections are also included in this industry.”<sup>45</sup> The SBA has developed a small business size standard for the category of All Other Telecommunications.<sup>46</sup> Under that size standard, such a business is small if it has \$35.0 million in annual receipts.<sup>47</sup> For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year.<sup>48</sup> Of this total, 1,400 had annual receipts below \$25 million per year.<sup>49</sup> Consequently, we estimate that the majority of All Other Telecommunications firms are small entities.

### 3. Resellers

17. *Toll Resellers.* The Commission has not developed a definition for toll resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>50</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>51</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>52</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>53</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>54</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>55</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

<sup>45</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>46</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>47</sup> *Id.*

<sup>48</sup> 2012 U.S. Economic Census, NAICS Code 517919 at <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1251SSSZ5&t=Employment%20Size&text=Estab%20%26%20Firm%20Size%3A%20Employment%20Size%20of%20Firms%20for%20the%20U.S.&n=517919&hidePreview=false&vintage=2012>.

<sup>49</sup> *Id.*

<sup>50</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>51</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>52</sup> *Id.*

<sup>53</sup> 2012 U.S. Economic Census, NAICS Code 517911, at <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012&text=Employment%20size&n=517911&cid=EMP>.

<sup>54</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>55</sup> *Id.*

18. *Local Resellers.* The Commission has not developed a definition for Local Resellers. The closest NAICS Code Category is Telecommunications Resellers and therefore the associated definition and data for Telecommunications Resellers has been used for Local Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>56</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>57</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>58</sup> Thus, under this category and the associated small business size standard, the majority of these local resellers can be considered small entities.

19. *Prepaid Calling Card Providers.* The Commission has not developed a definition for Prepaid Calling Card Providers. The closest NAICS Code Category is Telecommunications Resellers and therefore the associated definition and data for Telecommunications Resellers has been used for Prepaid Calling Card Providers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>59</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>60</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>61</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

20. As indicated above, the FNPRM seeks comment on whether and how to phase out the use of SIP Code 603 for purposes of voice service providers' immediate notification requirements. The FNPRM does not contain any projected reporting, recordkeeping, or other compliance requirements.

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<sup>56</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>57</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>58</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

<sup>59</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>60</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>61</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>62</sup>

22. The FNPRM seeks comment on whether and how to phase out the use of SIP Code 603 for purposes of voice service providers' immediate notification requirements. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

23. None.

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<sup>62</sup> 5 U.S.C. § 603(c).